

EXHIBIT

3

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 TRAVELERS CASUALTY AND SURETY COMPANY as
6 Administrator for RELIANCE INSURANCE
7 COMPANY,

8 Plaintiff,

9 -against-

10 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)
16 -----

17 May 21, 2008

18 10:13 a.m.

19 DEPOSITION of CHARLES BARTLETT,
20 taken by Plaintiff, pursuant to Notice,
21 held at the offices of DORMITORY AUTHORITY
22 OF THE STATE OF NEW YORK, One Pennsylvania
23 Plaza, New York, New York before Wayne
24 Hock, a Notary Public of the State of New
25 York.

1 C. Bartlett

2 understanding is they did direct Crocetti
3 through Trataros to work overtime. That
4 may have been a function of the fact that
5 Crocetti didn't provide sufficient
6 staffing.

7 Q. Now, Mr. Bartlett, since you
8 weren't there at that project time when
9 the work was actually ongoing, where does
10 your understanding come from?

11 A. Meeting minutes and
12 correspondence as well as claim-related
13 documents.

14 MS. SMITH: As well as?

15 THE WITNESS: Claim-related
16 documents.

17 Q. What are you referring to when
18 you speak to claim-related documents?

19 A. Correspondence from Crocetti to
20 Trataros to the Authority relative to
21 Crocetti's claim and correspondence from
22 Trataros to the Authority relative to
23 Crocetti's claim.

24 Q. When you refer to Crocetti's
25 claim, can you be more specific for me.

1 C. Bartlett

2 A. Yes.

3 Crocetti submitted a claim to
4 Trataros alleging damages associated with
5 productivity as well as labor and material
6 escalation and extended supervision. It
7 was -- they alleged they were delayed in
8 starting the project for a year and, for
9 that, labor and material escalated and
10 they were not able to find sufficient
11 staffing to do the work.

12 Q. And that claim was submitted to
13 DASNY?

14 A. Ultimately, yes. First to
15 Trataros. Trataros then applied their
16 markups and submitted to DASNY.

17 Q. Do you know at what point in
18 time that was done?

19 A. I know some of the dates. The
20 original letter from Crocetti to Trataros
21 was September 27, 2001. I believe
22 Trataros submitted its letter to DASNY in
23 October of 2001. I believe those are
24 roughly the time frames.

25 Q. And was that claim addressed by

1 C. Bartlett

2 DASNY?

3 A. Could you be more specific in
4 terms of addressed?

5 Q. What did DASNY do with the
6 claim?

7 A. We agreed to pay the escalation
8 at that time and afforded \$150,000 for
9 that purpose. We agreed that we would
10 negotiate the claims as it went to
11 productivity at the end of the project.
12 And initially we said we wanted to address
13 Trataros' claim in its entirety.
14 Ultimately we negotiated claim settlements
15 or attempted to negotiate claim
16 settlements directly with some of the
17 subcontractors.

18 Q. Was that done with Crocetti?

19 A. Yes.

20 Q. And what did you negotiate with
21 them?

22 A. I believe the overall claim
23 settlement was on the order of \$250,000.
24 When the \$150,000 advance payment is taken
25 away from that, the proposed final

1 C. Bartlett

2 haven't seen that?

3 A. I don't recall it.

4 Q. And it wouldn't be the normal
5 procedure if you had?

6 A. No, and I'm not sure -- well,
7 are you sure DASNY redacted it?

8 MR. SHAPIRO: If you don't know,
9 you don't know.

10 THE WITNESS: I don't know.

11 MR. SHAPIRO: If she's got to
12 document that shows something's been
13 redacted, you can comment.

14 Q. I'm going to show you what's
15 been marked as Exhibit 6, T6, and ask you
16 to take a look at it.

17 MS. BONACCI: To identify it for
18 the record, it's specification 03301
19 and it's entitled Cast-in-Place
20 Concrete Superstructure and Slab on
21 Grade.

22 Q. Mr. Bartlett, have you seen that
23 specification section?

24 A. Yes.

25 Q. Can you tell me which prime

1 C. Bartlett

2 contract this specification section fell
3 within?

4 A. I believe this is Shroid.

5 Q. Was Shroid's prime contract in
6 connection with Baruch contract nine?

7 A. I'm not sure the contract
8 number, but it was certainly for Baruch
9 site B.

10 Q. Can you tell me if this
11 specification section contains a section
12 regarding flash patching?

13 A. I don't see a section on flash
14 patching.

15 MR. SHAPIRO: Maybe she can point
16 you to the specific provision. If you
17 want, I can help. It's 3.09. It's
18 Bates reference 284369.

19 A. 3.09 isn't what I would describe
20 as flash patching. This is for patching
21 and repair of defective concrete, so I
22 don't see anything on flash patching.

23 Q. So you would not consider 3.09
24 to be flash patching; correct?

25 A. No.

1 C. Bartlett

2 paper before but I've certainly seen this
3 product information before.

4 Q. When you say, "this particular
5 piece of paper," do you mean this one that
6 happens to be Bates stamped or the actual
7 technical data sheet that you're
8 looking at?

9 A. I mean the one that went to TDX
10 apparently -- this doesn't look like the
11 one that was with the approved submittal
12 but I think it's identical.

13 Q. Can you tell me, from looking at
14 the exhibit that's been marked as T8, if
15 the product data is consistent with the
16 composition of the specified underlayment
17 in what I just showed you was marked as
18 Exhibit T7?

19 MR. SHAPIRO: Can we have T7
20 back?

21 Q. Here's T7 (handing).

22 A. (Reviewing).

23 It's not completely responsive
24 to all the requirements that are listed in
25 T7. For instance, in T7 it says that the

C. Bartlett

filler is natural sand. I'm not sure this says anywhere here that the filler is natural sand. But it does say that it's a Portland cement-based material, the bond strength is consistent with the requirement, the compressive strength is consistent with the requirements, the additives are open so the fact that it's polymer modified is fine. So the only thing that I see that would -- that's not addressed by this is the sand is a filler. I have seen the MSDS from this material for this period that said that sand is the filler.

Q. Based on looking at the Conflow technical data, is Conflow's compressive strength consistent with the specification requirement in T7?

A. Yes.

Q. And what about the sheer strength?

A. It doesn't specify sheer strength, unless I'm missing something. It has bond strength. And then we have

1 C. Bartlett

2 bond strength -- the specified is one
3 hundred fifty to two hundred PSI. The
4 bond strength on the data sheet is two
5 hundred PSI. And I take that to mean
6 tension, not sheer.

7 Q. Do you have any knowledge as to
8 how they compare in terms of performance?

9 MR. SHAPIRO: Objection to form.

10 You can answer it if you
11 understand it.

12 A. How what compares in terms of
13 performance?

14 Q. Do you have any knowledge how
15 Conflow with the technical data sheet and
16 the application properties that are listed
17 on it would compare with the products that
18 the architect originally had contained in
19 the specification sheet?

20 A. I really can't speak to that.
21 The material that was supplied wasn't
22 consistent with this data sheet.

23 Q. Without that, without looking at
24 what was supplied that you believe may not
25 have been consistent to it, do you have --

1 C. Bartlett

2 A. So if Conflow showed up that was
3 consistent with what they advertised,
4 would it compare well with this; is that
5 the question?

6 Q. Yes.

7 A. Yes.

8 Q. And do you have any knowledge
9 with how Conflow compares with the
10 cementitious floor leveling products that
11 were specified in connection with cost?

12 MS. SMITH: With cost?

13 A. The only Conflow I can speak to
14 -- again, I just want to be clear. The
15 Conflow that was delivered didn't meet
16 these specifications. So if we're
17 speaking to a fictitious material that
18 would have met these specifications and
19 how it compares, I can't say.

20 Q. Pricing, cost.

21 A. Oh, I don't know, I don't know
22 how it compares to the cost of the two
23 materials.

24 Q. So you have no idea whether it's
25 an equal cost as what was originally

1
2 CERTIFICATION BY REPORTER
3

4 I, Wayne Hock, a Notary Public of the
5 State of New York, do hereby certify:

6 That the testimony in the within
7 proceeding was held before me at the
8 aforesaid time and place;

9 That said witness was duly sworn
10 before the commencement of the testimony,
11 and that the testimony was taken
12 stenographically by me, then transcribed
13 under my supervision, and that the within
14 transcript is a true record of the
15 testimony of said witness.

16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, that I am not
19 interested directly or indirectly in the
20 matter in controversy, nor am I in the
21 employ of any of the counsel.

22 IN WITNESS WHEREOF, I have hereunto
23 set my hand this 27th day of MAY
24 , 2008.

25 Wayne Hock

VERITEXT REPORTING COMPANY

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 TRAVELERS CASUALTY AND SURETY COMPANY as
6 Administrator for RELIANCE INSURANCE
7 COMPANY,

8 Plaintiff,

9 -against-

10 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)
16 -----

17 May 22, 2008

18 10:13 a.m.

19 CONTINUED DEPOSITION of CHARLES
20 BARTLETT, taken by Plaintiff, pursuant to
21 Notice, held at the offices of DORMITORY
22 AUTHORITY OF THE STATE OF NEW YORK, One
23 Pennsylvania Plaza, New York, New York
24 before Wayne Hock, a Notary Public of the
25 State of New York.

C. Bartlett

taken against Shroid in connection with
the understrength of the concrete?

MR. SHAPIRO: Objection.

You can answer.

A. No.

Q. I'm going it to show you what's
been marked as T29.

MS. BONACCI: Just to identify it
for the record, it's a change order
marked GC2-028.

A. (Reviewing).

Okay.

Q. Mr. Bartlett, have you seen the
document that's been marked as T29 prior
to today?

A. Yes. However, it may not be the
same document. I may have seen the fully
executed document.

Q. That's exactly what I was about
to ask you.

Did DASNY execute this change
order?

A. Yes.

Q. Do you know who executed on

1 C. Bartlett

2 DASNY could not instruct Trataros to
3 proceed with floor leveling?

4 MR. SHAPIRO: Objection.

5 You can answer.

6 A. Yes, there was a water intrusion
7 -- yes, I believe so. There was a water
8 intrusion problem in the basement that was
9 ultimately addressed with an interior
10 water collection system. So perhaps
11 that's the reason the two work items were
12 broken out separately.

13 Q. And do you have any reason to
14 believe that ultimately underlayment was
15 not installed from the second floor down
16 through the basement levels?

17 A. No.

18 Q. If you look at the description
19 of work on the first page, what was the
20 self-leveling floor fill that's specified,
21 if you know?

22 A. As evidenced by the attached
23 reference documents, starting at Bates
24 stamp 150207, the material would be
25 Conflow.

C. Bartlett

Q. And do you know if that was the product that was ultimately installed?

A. A product labeled Conflow that was not consistent with these specifications was installed. If you're asking me if the product specified here was installed, it was not.

Q. A product entitled Conflow, you have an understanding that was installed?

A. Yes.

Q. Correct, that's what I'm asking. Do you know who decided the ordering of the floors that would be leveled?

MR. SHAPIRO: Objection.

You can answer if you understand.

A. No, I do not.

Q. And do you have any reason to believe that TDX did that?

A. They could have but nothing specific.

Q. I'm going to ask you to look at, within the change order, the Bates number

1 C. Bartlett

2 Conspec visited the site. Whether or not
3 there was still a concern that Conflow was
4 not an adequate material I can't say.

5 Q. The revision of the material, is
6 it solely in the food court server area?

7 MR. SHAPIRO: Objection to form.

8 You can answer.

9 A. In terms of areas that received
10 terrazzo, to the best of my knowledge,
11 yes, other than at one point there were
12 bags of a product called Levelayer 1
13 delivered to the project and the -- I
14 believe Crocetti or perhaps Bartec
15 questioned the manufacturer as to what
16 that product was and there is a letter
17 from Conspec saying that product from
18 Dayton superior is identical to Conflow.

19 Q. At the time period you're
20 looking at wasn't it DASNY's conclusion
21 that any of the issues were caused by
22 contamination, issues relating to
23 delamination?

24 A. The manufacturer's determination
25 was that an area of the Conflow appeared

1 C. Bartlett

2 to be contaminated and, as a remedial
3 measure, directed that that be taken out
4 and repoured.

5 Q. You have referenced adequacy of
6 the product in response to this at this
7 time frame and I wanted to clarify that.

8 MR. SHAPIRO: Is your question
9 does he question the adequacy of the
10 product; is that the clarification
11 you're asking him for?

12 MS. BONACCI: No, he clarified
13 it. He had stated that and I wanted
14 it clarified, so he just clarified it.

15 Q. Is hydraulic cement more
16 expensive than self-leveling underlayment?

17 A. Hydraulic cement can be
18 self-leveling underlayment.

19 MS. BONACCI: Let me clarify that
20 question then.

21 Q. Is hydraulic cement more
22 expensive than Conflow?

23 A. Well, Conflow, per the product
24 literature, is a hydraulic cement.
25 Whether the material that Crocetti was

1
2 CERTIFICATION BY REPORTER
3

4 I, Wayne Hock, a Notary Public of the
5 State of New York, do hereby certify:

6 That the testimony in the within
7 proceeding was held before me at the
8 aforesaid time and place;

9 That said witness was duly sworn
10 before the commencement of the testimony,
11 and that the testimony was taken
12 stenographically by me, then transcribed
13 under my supervision, and that the within
14 transcript is a true record of the
15 testimony of said witness.

16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, that I am not
19 interested directly or indirectly in the
20 matter in controversy, nor am I in the
21 employ of any of the counsel.

22 IN WITNESS WHEREOF, I have hereunto
23 set my hand this 27th day of May
24 , 2008.

25 Wayne Hock

VERITEXT REPORTING COMPANY

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 TRAVELERS CASUALTY AND SURETY COMPANY as
6 Administrator for RELIANCE INSURANCE
7 COMPANY,

8 Plaintiff,

9 -against-

10 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
11 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
12 ASSOCIATES, P.C.,

13 Defendants.

14 Case No. 08-CV-6915 (DLC)

15 (CAPTION CONTINUED)
16 -----

17 July 2, 2008

18 10:17 a.m.

19 CONTINUED DEPOSITION of CHARLES
20 BARTLETT, taken by Plaintiff, pursuant to
21 Notice, held at the offices of HOLLAND &
22 KNIGHT LLP, 195 Broadway, New York, New
23 York before Wayne Hock, a Notary Public of
24 the State of New York.
25

C. Bartlett

A. Yes.

Q. As far as you are aware, has the school been in operation continuously since it opened?

A. To the best of my knowledge, yes.

Q. And when you went to the school the day before your deposition started --

MR. ZICHELLO: Withdrawn.

Q. That's a multistory building?

A. Correct.

Q. Is floor number fourteen the highest floor that has any terrazzo on it?

A. Yes.

Q. When you were at the Baruch building the day before your deposition started, did you examine any of the terrazzo on the fourteenth floor?

A. Yes.

Q. And what did you observe?

A. I observed the condition that's present throughout much of the building, or I believe I observed the condition, where the terrazzo had pulled back from

C. Bartlett

the zinc strips.

Q. Anything else?

A. Not that I recall at this time.

Q. The terrazzo flooring is divided into panels?

A. Yes.

Q. What is the approximate size of the panels on the fourteenth floor?

A. I believe -- and again, this may not be completely accurate -- but I believe they're two feet by four feet.

Q. And approximately how many instances, how many panels did you see where you say you saw the edge of the terrazzo pulled back from the divider strips?

MR. PLATEK: Throughout the building or just on the fourteenth floor?

MR. ZICHELLO: We're on the fourteenth floor at this point.

A. I didn't keep any record of that. As I recall, I saw several instances of that condition but I didn't

C. Bartlett

take any note of how many I observed.
Certainly I didn't survey the entire
floor.

Q. What's your best recollection
approximately; was it every two, was it
every panel, was it half of them?

A. I would say a number of them. I
wouldn't want to put a number to it. I
don't exactly remember.

Q. You can't do any better than
that?

A. No.

Q. Did you examine each and every
floor from thirteen down to let's say the
third floor?

A. No.

Q. Which floors did you examine and
which did you not examine?

A. I went to one of the basement
levels --

Q. Excuse me, my question is only
down to the third floor at this point.

Is that clear to you?

A. So your question is between

1 C. Bartlett

2 three and thirteen?

3 Q. Between three and thirteen,
4 which did you look at and which did you
5 not look at?

6 A. As I recall, we walked from
7 three to eight and then went to maybe
8 twelve and fourteen.

9 Q. And what can you tell us you saw
10 on twelve?

11 A. Again, I don't recall the
12 specific instances of each floor. What I
13 did observe is that, on virtually every
14 floor, there seemed to be evidence of the
15 terrazzo panels having shrunk and pulled
16 back from the zinc strips. In some cases,
17 it was much worse and the floor was
18 actively failing. In other cases, the
19 terrazzo was still bonded but it appeared
20 to have pulled back.

21 MR. PLATEK: I move to strike
22 that answer as nonresponsive.

23 Q. You say every floor.
24 You didn't look at every floor;
25 isn't that what you've told us?

C. Bartlett

A. That's correct.

Q. So you're only speaking to the floors you've looked at?

A. Correct.

Q. The floors you did not look at, is there some reason you did not go to those floors?

A. Just in the interest of time. I was wanting to get a general look at the building.

Q. Have you finished your answer?

A. Yes.

Q. Now, on the twelfth floor, can you give us an approximation of how many instances you say you saw where the terrazzo had separated from the divider strips?

A. No. Again, there were several areas. We have retained an expert who's performed a detailed survey. They would be better prepared to answer that question.

Q. Was this expert with you on that occasion?

C. Bartlett

A. No.

Q. Is it Mr. or Ms. Raut?

A. Mister.

Q. Did Mr. Raut point out anything to you on the fourteenth floor?

A. Not that I recall.

Q. And other than what you've described so far, did you see any other terrazzo on the twelfth floor that looked unsatisfactory to you?

A. Not that I recall specifically, no. As I say, I saw there was failing terrazzo on a number of floors. I don't recollect the exact location. I saw the panels having pulled back from the strips on virtually every floor I inspected, but I didn't take any records as to how many instances. In general, it was a qualitative review on my part, not quantitative.

Q. And what do you mean by actively failing?

A. Where the terrazzo had actually separated from the underlayment and was

1 C. Bartlett

2 curling up at the corners.

3 Q. And you saw that on the twelfth
4 floor?

5 A. I didn't say that. I said I
6 didn't recall exactly where -- maybe I
7 just need to clarify.

8 I don't remember precisely which
9 floors I observed that condition on other
10 than the first floor lobby where there was
11 quite a bit of failed terrazzo.

12 Q. So your best recollection today
13 is on the twelfth floor you say you saw
14 this condition where the terrazzo had
15 separated from the divider strips; is that
16 an accurate statement?

17 A. Correct.

18 Q. What about the other floors from
19 three -- was it three to eight?

20 A. Yes.

21 Q. Tell us what you saw on those
22 floors that looked to you unsatisfactory.

23 MR. FROESSEL: I object to the
24 form.

25 You can answer.

1 C. Bartlett

2 A. In some cases, the terrazzo had
3 actively failed -- and again, I don't
4 recollect exactly on what floors the
5 terrazzo had separated -- but on virtually
6 all of the floors I inspected, there
7 appeared to be evidence of the terrazzo
8 having separated from the zinc strips.

9 Q. Any other condition that you saw
10 on floors three to eight on that occasion?

11 A. There was some alligatoring of
12 the finish. There appeared to be some
13 cases where the colored chips in the
14 terrazzo were not evenly distributed or
15 there didn't seem to be any color chips,
16 but there was not a lot of that.

17 Q. Any other conditions that you
18 saw on floors three to eight that you
19 regard as unsatisfactory?

20 A. Not that I recall, no.

21 Q. Did you -- now, again, by active
22 failing, you mean curling up as opposed to
23 merely separating; is that what you're
24 telling us?

25 A. Yes.

1 C. Bartlett

2 second floor that you regarded as
3 unsatisfactory terrazzo?

4 A. Areas where the terrazzo had
5 begun to fail and also areas where the
6 panels had pulled back from the zinc
7 strips and also raised edges, that's
8 really where it's failing.

9 Q. When you say begun to fail and
10 also where it pulled back from the zinc
11 strips, what do you mean by begun to fail
12 as opposed to pulling back from the zinc
13 strips?

14 A. Where it's beginning to fail,
15 it's actually separated from the
16 underlayment; it sounds hollow. Sometimes
17 you can step on a panel and it will move
18 up and down is what I mean by begun to
19 fail.

20 Q. So on the second floor -- did
21 you see any alligatoring on the second
22 floor?

23 A. I may have.

24 Q. And you saw instances on the
25 second floor where you say the terrazzo

C. Bartlett

preparation of their cost estimate.

Q. When you say your expert, you don't mean TDX; do you?

A. No, I mean Simpson Gumpertz and Heger.

Q. Were Simpson Gumpertz and Heger retained at the time TDX presented this document, the TDX estimate, August of '03?

A. No.

Q. As of August of '03 when TDX typed up this estimate, as far as you know, was there any backup material prepared or compiled; surveys, takeoffs, union costs, any of the things you mentioned, did they exist as of the TDX August of '03 survey?

A. I can't say.

Q. Who would you ask if you wanted to find out?

A. TDX.

Q. Has the Dormitory Authority spent any money to repair or replace terrazzo as of today?

A. No.

1 C. Bartlett

2 MR. FROESSEL: Objection to form.

3 You can answer.

4 Q. Has the Dormitory Authority
5 entered into any contracts for the repair
6 or replacement of any of the terrazzo
7 flooring as of today?

8 A. No.

9 Q. Has the Dormitory Authority
10 obtained any price quotes from anyone to
11 do repairs or replacement of any terrazzo?

12 MR. FROESSEL: Objection to form.

13 You can answer.

14 A. No, other than our expert
15 contacted a terrazzo installation firm to
16 get unit costs for the purpose of
17 preparing their estimate.

18 Q. And do you know what the firm or
19 firms were, who they contacted?

20 A. I don't recall.

21 Q. If any repairs or replacements
22 are done, would they be paid for initially
23 by DASNY or by CUNY?

24 A. I think that would depend on the
25 scope of the repair that was carried out.

1 C. Bartlett

2 extent one was asserted.

3 Q. In connection with the terrazzo
4 at this building, is the Dormitory
5 Authority satisfied with the inspection
6 services that had been performed by the
7 architects from KPF firm?

8 A. Yes.

9 Q. And also in connection with the
10 terrazzo, is the Dormitory Authority
11 satisfied with the inspection services
12 that were provided by TDX?

13 A. No.

14 Q. In what respects do you feel
15 that they were not satisfactory, the TDX
16 services?

17 A. You asked if they were
18 satisfied. I can't say that we are. On
19 the other hand, I'm not sure, not having
20 been with the Authority or observed the
21 work, what TDX would have been able to see
22 in regards to the deficiencies of the
23 terrazzo. I just wasn't there. Perhaps
24 their inspection efforts were satisfactory
25 and the issues at hand were not readily

C. Bartlett

observable. I wasn't there.

Q. Well, then what do you base your statement on that you don't think the Dormitory Authority is satisfied?

A. The terrazzo's failing throughout the building.

Q. And you feel that raises questions about TDX's inspections?

A. Yes.

Q. What about the self-leveling underlayment? Is the Dormitory Authority satisfied with the architect's, KPF's services in connection with the self-leveling underlayment?

A. Yes.

Q. What about TDX, is the Dormitory Authority satisfied with everything TDX had to do or did with respect to the underlayment?

A. Yes.

Q. Now, in connection with your work at your cost control unit, I think you told us that you had occasion to meet with some people from the Crocetti

1 C. Bartlett

2 it wasn't intended to be, surface prep
3 would have removed it.

4 Q. Was there any point in time
5 where the surface prep of the surface
6 beneath the terrazzo was altered on this
7 project?

8 A. The requirement for surface
9 prep?

10 Q. Right.

11 A. I don't believe it was ever
12 altered.

13 Q. I'm not going to go through
14 every floor with you, but on your most
15 recent inspection of the building, May 20,
16 2008, is it fair to say that you saw
17 terrazzo failure, what you've defined as
18 terrazzo failure, on every floor that you
19 went to?

20 A. I didn't see terrazzo failure on
21 every floor. I saw the defect in the
22 flooring that will ultimately lead to
23 failure on every floor. And on some
24 floors I saw actual failing terrazzo.

25 Q. How many floors -- you went to

C. Bartlett

the fourteenth floor, the twelfth floor,
three through eight, so far we've got
eight floors?

A. Actually it's one through eight.

Q. So ten floors.

And you went to B3?

A. That's my recollection.

Q. So that's eleven floors?

A. Correct.

Q. Of those eleven floors that you
went to, how many of them had no failure
as you've defined it?

A. I don't recall.

Q. But there were some that did not
actually have any failure; is that
correct, as you've defined it?

A. Correct.

Q. Would you characterize any of
the floors being in worse shape than
others?

A. Yes.

Q. Which ones were in worse shape
than others?

A. The one that I most clearly

1 C. Bartlett

2 A. I believe they were retained by
3 Holland and Knight.

4 Q. Any other expert reports that
5 you reviewed in that litigation?

6 A. None that I recall now.

7 Q. Earlier you stated that DASNY
8 was not satisfied with TDX's services with
9 regard to the terrazzo installation.

10 Do you recall giving that
11 testimony?

12 A. Yes.

13 Q. And earlier you testified that
14 DASNY was satisfied with TDX with regard
15 to the underlayment installation.

16 Do you recall giving that
17 testimony?

18 A. Yes.

19 Q. Can you explain to me why
20 DASNY --

21 MR. PLATEK: Strike that.

22 Q. And you stated that DASNY was
23 not satisfied with TDX's services for,
24 among other reasons, that the terrazzo was
25 failing; is that correct?

1 C. Bartlett

2 A. Correct.

3 Q. Is it DASNY's allegation that
4 the underlayment also failed on this
5 project?

6 A. Yes.

7 Q. Can you explain to me then why
8 DASNY is satisfied with TDX's services
9 with regard to underlayment installation?

10 A. Perhaps you should clarify the
11 issue. I may have misspoken. You know,
12 we're generally not satisfied that the
13 terrazzo system is failing so I guess, to
14 the extent that underlayment's part of
15 that, I would say we're generally not
16 satisfied with that either. But I have no
17 specific information in regards to any
18 deficiency in TDX's inspection efforts.
19 But it would be difficult to say we're
20 satisfied when the terrazzo is failing
21 throughout the building.

22 MR. PLATEK: Could you read that
23 back, please.

24 (Whereupon the requested portion
25 was read back by the reporter)

C. Bartlett

Q. What were TDX's inspection efforts with regards to underlayment installation?

A. It would be no different than their inspection efforts relative -- their inspection obligations for the rest of the project.

Q. Can you tell me -- can you answer my question, please, what were their inspection efforts with regards to underlayment installation?

A. I believe their contract called for daily inspection of the work and the issuance of periodic exception reports. But again I would need to look at the specifics of their contract.

Q. Have you seen any periodic inspection reports from TDX with regards to Bartec's scarification of the concrete slab?

A. No.

Q. Have you seen any periodic exception reports from TDX with regards to Bartec's mixing of the underlayment?

C. Bartlett

A. Indirectly, yes.

Q. What do you mean by that?

A. There was a letter that TDX issued in February, 2001 noting that the terrazzo -- and again, I believe it was delaminating or coming off the floor; I'm not specific as to the -- my memory is not specific as to the exact language. And at that time they directed Trataros to do a survey of the building and prepare a report as to remedial action, if I recollect that correctly. It didn't specifically go to mixing; only the failure of the underlayment.

Q. Are the procedures for mixing a gypsum-based compound different than mixing a cementitious-based compound?

A. I couldn't say.

Q. Do you recall what the findings were with regard to the terrazzo delaminating in the 2001 letter or what specific physical observations were made with regard to that delamination?

MR. ZICHELLO: By the witness,

C. Bartlett

observations does that denote to you, Mr. Bartlett?

A. Delamination.

Q. And are you aware whether or not that delamination that's noted could have occurred for other reasons other than improper mixture of the Conflow?

A. It could.

Q. Delamination could occur, if I'm not mistaken, as a result of the application of a contaminant; isn't that correct?

A. It could.

Q. And delamination could occur because terrazzo is installed over underlayment before the underlayment is given time to properly cure; is that correct?

A. Again, I'm not an expert on the behavior of gypsum and what would cause it to delaminate or not delaminate, but perhaps that could be a factor.

Q. So an improper chemical compound could lead to delamination of Conflow;

C. Bartlett

correct?

A. That could potentially could. I don't know if it would.

Q. Let's assume that the Conflow were, in fact, a cementitious compound.

Could the installation of terrazzo above it before it had fully cured, could that lead to delamination?

A. It could. I don't know.

Q. How about improper protection of the Conflow prior to installation of the terrazzo?

A. As leading to --

Q. Delamination.

A. I wouldn't think so.

Q. How about if other trades or anyone were to walk across the terrazzo prior to the installation of the terrazzo -- over the underlayment prior to the installation of the terrazzo, could that lead to delamination?

A. I wouldn't think so. But again, I'm not an expert in the behavior of gypsum.

1 C. Bartlett

2 point that you've taken the courses?

3 A. No, long prior to that.

4 Q. So you had the structural
5 engineering knowledge when you issued this
6 report on November 5, 2003; is that
7 accurate?

8 A. Yes.

9 Q. Now, the camber you were
10 attributing at that time to KPF.

11 What else were you attributing
12 at that time to KPF as it related to the
13 flooring system?

14 A. They had signed off on a
15 material that was not appropriate as an
16 underlayment for terrazzo flooring.

17 What I've since learned is that
18 self-leveling cementitious underlayments
19 are frequently used as underlayment for
20 terrazzo flooring. I should say our
21 expert has informed me that those
22 materials are frequently used.

23 Q. Hold one second there.

24 You say they're frequently used
25 for terrazzo flooring.

1 C. Bartlett

2 Are they frequently used for a
3 thin set epoxy terrazzo flooring?

4 A. That's what our expert has told
5 me.

6 Q. Go on.

7 A. Again, some of my thinking as to
8 the inappropriateness of the underlayment
9 had to do with the concern that it was
10 soft and dissolved readily in water. That
11 wouldn't be inappropriate material. At
12 the time I had no way of knowing that it
13 was not, in fact, a cementitious material,
14 it was gypsum.

15 Q. When you're saying it was soft
16 and dissolved in water, where did that
17 belief come from?

18 A. It's actually in the report. I
19 believe that was from Niagra Consulting.

20 Q. I think we're having a small
21 miscommunication, so I want to clarify.

22 It was my understanding that you
23 knew prior to -- your interpretation was
24 that it was not an appropriate material
25 because it was soft and dissolved in

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of July, 2008.

Wayne Hock